RECENT AMERICAN DECISIONS.

Court of Appeals of New York.

LOUIS GUILLAUDET *v.* JAMES HOWELL.

A voluntary assignment of personalty, valid in the place of contract, will not be upheld when opposed to the positive laws of the place where the property is situated.

A firm residing and doing business in New York, made a voluntary assignment for the benefit of creditors, which included (*inter alia*) personal property in New Jersey. By the law of the latter state this assignment was void, because it gave preferences. After the assignment, the property was attached at the suit of creditors in New Jersey, against whom an action was afterwards brought by the assignee of the insolvent firm. *Held*, that the title acquired under the attachment must prevail over the assignment.

ACTION for the detention and conversion of some boilers. A firm of Boardman & Co., residing and doing business in the city of New York, failed in December 1857, and then in that city made a general assignment to the plaintiff, then a resident of said city, for the benefit of their creditors, giving preferences. The assignors then had some steam-boilers in New Jersey, which had been manufactured for them by the defendants, and for which they were then indebted to the defendants.

After the assignment, the defendants, residents of New Jersey, sold the steam-boilers under proceedings commenced by foreign attachment against the assignors in New Jersey, to satisfy said demand. Plaintiff demanded the boilers, and defendants refused to deliver them. The boilers were never removed from the premises of the defendants, but remained in front of their manufactory at the date of the attachment, and at the time of the demand and refusal.

It appeared on the trial that an agreement giving preferences was void in New Jersey by the laws of that state. Verdict for defendants, affirmed at General Term of the Supreme Court, in the First District, and the plaintiff appeals.

I. T. Williams, for appellant.

E. R. Robinson, for respondents.

The opinion of the court was delivered by

PECKHAM, J.—The point is here distinctly presented, and it is the only point in the case, whether a sale in New York, legal there, of chattels situate in New Jersey, is valid in the latter

state as against creditors of the assignors residing there, when it is void by the laws thereof. It is a general rule in regard to personal property, that it has no locality, no *situs*, but follows the person of the owner. It is therefore governed in its transfer and disposition by the law of the domicil of its owner, by the law of the place where the sale is made, without regard to the law of the locality where it may be actually situated; so that if a sale be valid where made, it is valid everywhere: Story's Confl. of Laws, §§ 379, 383, 384, &c.; *Warren* v. *Van Buskirk*, 13 Abbott's Pr. R., affirmed in this court in December 1865, opinion by Justice POTTER. If that be the universal rule, the plaintiff in this case is of course entitled to recover. But certain exceptions are stated in the books, which seem to be as well substantiated as the rule itself. One exception is, that such sale is not valid in another state, where the property is in fact situated, if it conflict with the interests of that state or its citizens.

Huberus lays down three maxims in reference to the transfer of property, and the effect of such transfer under different governments: "1st. The laws of every empire have force within the limits of that government, and are obligatory upon all within its bounds. 2d. All persons within the limits of a government are considered as subjects, whether their residence is permanent or temporary. 3d. By the courtesy of nations, whatever laws are carried into execution within the limits of any government are considered as having the same effect everywhere, so far as they do not occasion a prejudice to the rights of the other governments or their citizens." [Quoted in a note to 3 Dall. R. 370.]

Justice COWEN, when reporter, regarded the rule settled by the cases to be "that the law of a place where the contract is made or to be performed is to govern as to the nature, validity, construction, and effect of such contract; and being valid in such place, it is to be considered valid and enforced everywhere, with the exception of cases in which the contract is immoral or unjust, or in which the enforcing it in a state would be injurious to the rights, the interest or convenience of such state or its citizens;" and cites many cases: *Andrews* v. *Herriot*, 4 Cow. 510, in note at 511.

Judge STORY, after stating that personal property, by the law of England, has no locality, but must be governed by the law of the domicil of its owner (Story's Confl. Laws, §§ 330, 331), and

that foreign jurists whom he cites affirm the same doctrine, states the exception to the rule substantially as before expressed, as adjudged in different states in this country, and adds: "No one can seriously doubt that it is competent for any state to adopt such a rule in its own legislation, since it has perfect jurisdiction over all property, personal as well as real, within its own territorial limits, nor can such a rule, made for the benefit of innocent purchasers and creditors, be deemed justly open to the reproach of being founded in a narrow or a selfish policy:" Ibid. § 390.

What is injurious to the rights of the citizens where the property is situate should be the subject of positive legislation, and not left to the discretion of the courts: (Id., § 390), and so are the authorities generally in the several states, although the rule is sometimes more broadly expressed: *Zipsey* v. *Thompson*, 1 Gray (Mass.) 243; *Vernam* v. *Camp*, 1 Green (N. J.) 326; *Le Roy* v. *Crowninshield*, 2 Mason 157; *Fox* v. *Adams*, 5 Greenleaf (Me.) 245; *Olivier v. Townes*, 14 Martin (La.) 97–2; Cond. R. Sup. Ct. (La.) 606, a well-considered case.

So in Virginia and Kentucky (says Chancellor KENT), under their statute laws, all real and personal property within the state, is held to be bound by the attachment laws of the state, although the owner should execute an instrument in control of it at his domicil abroad. The rule of courtesy is held to be overruled by positive law: 2 Kent 407; *Bishop* v. *Halcomb*, 10 Conn. 444. Such I believe is the rule of law in all of the states where the law has been adjudicated, except perhaps South Carolina. The case referred to as an authority in South Carolina of *Green* v. *Mowry*, 2 Bailey's R. 163, I have not been able to find, except a statement of its decision in a note in 2 Kent 408. Whether it applied to movables or to a chose in action is not stated.

The exception is fully recognised by Lord LOUGHBOROUGH in *Lill* v. *Warswick*, 1 Hen. Bl. 693, and by the reporter in giving the course of reasoning of the judge in the Exchequer Chamber, in *Philips* v. *Hunter*, 2 Hen. Bl. 405. Bankrupt laws, it is now generally held in this country, do not operate extraterritorially. But in the case at bar, it is a question of a conflict of laws. By the law of New Jersey it is void as to creditors. The law of this state is of course invalid as a mere law in New Jersey; it cannot operate there except by comity or courtesy, and as to property actually situate in New Jersey, that state has the conceded

right to legislate. She may declare what shall transfer the title as against her citizens, creditors of the assignor. The property is within her exclusive jurisdiction. She protects and regulates it. Though we may differ as to the policy or principles of her laws, we must admit their validity. In all the books it is conceded that real property must be transferred according to the law of its locality, because it is subject to the exclusive jurisdiction of the government of its locality, and because every legal remedy in regard to it must be sought there. This is not a case of priority of title, but of conflicting title. The law of New York holds this sale valid, as to all property which her laws can regulate. Her laws are of no force in New Jersey, as laws, but by comity they are enforced as to a transfer of personal property, valid here except where injurious to her citizens there. There is not a decision in this state against this position, although there are some general dicta that would permit a different construction. If the fact accorded with the fiction, and the property were, in fact, within the state when the assignment was made, the title would pass, and it would not be liable to foreign attachment, though afterward found in New Jersey.

This court, in *Warren* v. *Van Buskirk*, *supra*, has held that this action would lie if the defendants had been residents of our state when the assignment was made, and therefore subject to its laws. So are the decisions generally in other states: *Bullock* v. *Taylor*, 16 Pick. 335.

The Supreme Court in the Third District, at General Term, lately held that the exception did not extend to a debt due from a resident in Connecticut to a resident in this state; but that an assignment thereof, valid here, though invalid there by her laws, ought to be held valid there; also even as against residents of Connecticut, because a debt is not a corpus capable of local position, but merely a *jus incorporeal*. See *Thurman* v. *Stockwell*, decided in 1865, which is sustained by two other decisions of precisely the same character. In *Speed* v. *May*, 17 Penna. State Rep. 91, it was held that an assignment of a chose in action due from a resident in Pennsylvania, legally made in Maryland, was valid in Pennsylvania, although the general assignment which included the claim was not recorded as required by the law of the latter state. So in *Caskie* v. *Webster*, 1 Wallace, Jr. 131, Mr. Justice GRIER made a like decision. *Thurman*

v. *Stockwell* made a distinction between debts and movable assigns. In *Caskie* v. *Webster*, the judge remarked: "A debt is a mere incorporeal right. It has no *situs* and follows the person of the owner." But he did not base his decision on that distinction. In a very brief opinion he seemed impliedly to admit that the law was against his decision as to personal property as between different nations; but he did not think that the different states of this Union are to be regarded, as a general thing, in the relation of states foreign to each other. With deference, I think the doctrine on this subject to be well established the other way. See cases before cited, and *Hoyt* v. *Thompson*, 19 New York 226; *Hemmon* v. *The People*, 20 Id. 602.

This court has recognised the distinction as to a *situs* between debts and movables—the latter being capable of having a *situs*, not the former, as they follow the domicil of the owner: *People* v. *Commissioners of Taxes*, 23 New York 224. It is insisted that great embarrassment will occur if a transfer of movables must be made according to the law of its *situs*, as it is not expected that persons will know the laws of a foreign country. This difficulty is rather imaginary than real. The transfer is always held valid for all general purposes, with the exception before stated. There would seem to be no great injustice in holding that movables in one state, which have probably been a ground of their owners obtaining credit there, should not be transferred to another state to pay foreign debts, leaving local debts unpaid, unless it be done in accordance with the law of their locality.

I know no decision anywhere that would sustain this action. The cases before cited of *Thurman* v. *Stockwell*, *Speed* v. *May*, and *Caskie* v. *Webster*, are, I think, sound law. A chose in action cannot surely be said to have any actual *situs* in the place where the debtor resides. As a general principle, it is payable at the residence of the creditor if not expressed otherwise, and a tender to be good must be made to the creditor. There would seem, therefore, to be no sound basis for the debtor's state to legislate exclusively as to the legality of a transfer of that debt made by a foreign creditor. In such case, as in all others where the property transferred does not actually lie within the jurisdiction of another government, a sale or a contract valid where made is valid everywhere.

The exception that the contract cannot be enforced if it be

"immoral or unjust," will and should be rarely if ever heeded between civilized nations. Every civilized nation should be the sole and exclusive judge of what is moral and just in her legislation upon matters conceded to be within her exclusive jurisdiction. This state has forbidden the taking of more than at the rate of seven per cent. interest by the severest penalties. Lotteries, though once allowed for literary or religious purposes, are now declared a nuisance. So of slavery, once sustained, but now prohibited in every state of the Union. Yet a note given for slaves, or lottery tickets, or usurious by our law if made here, if valid by the laws of the country where made and payable, would be sustained here.

It would, I admit, be more harmonious with the general principle that personal property has no *situs*, and practically, perhaps, more convenient to hold that a sale of movables, valid where made, should be valid everywhere. But in addition to the objection thereto already stated, suppose the laws of the states differ, as they sometimes do, as to what is personal and what is real property, could it be pretended that a sale here, without deed, of what our law calls personal and the law of New Jersey declares to be real estate, actually located there, would pass the title to the property there?

Whatever may be our views as to what the law ought to be in cases like the one at bar, the decisions, harmonizing too with elementary writers, are too uniform and too numerous to warrant us in overruling them. Should we do so, and hold the defendant responsible in this case, we should be in antagonism with nearly every state in the Union, if not with all—upon a question, too, which each state has the right to decide for itself, and generally to enforce its decision; and as a general thing our decision the other way would remain a lifeless rule, without our having the least power to enforce it.

We think the judgment should be affirmed.

It is not proposed in this note to discuss the subject of the conflict of laws in respect to involuntary assignments of personalty. Whatever force there may be in the regrets expressed by Chancellor KENT, that the law of this country had not followed the liberal doctrine of the English courts, the rule is now well settled, that a transfer of a debtor's property under proceedings in bankruptcy in a foreign court, will not operate to defeat the rights which domestic creditors may have acquired by a subsequent attachment, or in other words, that where in such cases the law of the debtor's domicil comes in conflict with the law

of the *situs* of the property, the former must give way. The spirit of uniformity which ought to prevail in the law, and which tends to give it the character of a science, would indeed seem to dictate that an assignment, no matter whether by operation of law or by act of party, valid in the place where made, should be recognised in every country where the movable property of the assignor may be found; but the practical inconveniences which attend the enforcement of such a rule, and the undoubted right of every government to protect its own citizens who chance to be creditors of a foreign debtor from the operation of a foreign law, have led the courts of this country to adopt a different rule: See 2 Kent's Com. pp. 405–408. This is so well settled that it would be a mere waste of time to cite authorities in its support. As to assignments, however, effected by act of party alone, the decisions in this country are not perhaps altogether harmonious, and the doctrines upon which they profess to rest not entirely well defined. We intend to state with great brevity such rules as appear to be settled, and to notice a few recent decisions upon these points. In voluntary transfers, then, of personal property, three classes of laws may come into conflict:—

1. Those of the place where the contract was made—*leges loci contractus.*

2. Those of the place where the proproperty is situated—*leges loci rei sitæ;* and

3. Those of the place where the contract is sought to be enforced—*leges fori.*

The rules in regard to the application of the first and third classes of laws are well settled. By the former are to be regulated all such matters as relate to the capacity of the contracting parties and the interpretation of the contract itself; by the latter are governed the nature and extent of the remedies by which the contract is to be made good, and the time within which the action is to be brought. Of the former the rule that the age at which a party is able to enter into a binding engagement is to be determined by the law of the place of contract, is an instance; of the latter an illustration will be found in the effect of the Statutes of Limitation which happen to be in force in the forum, and by which the remedy for the breach of the contract may be barred, although in the place of making the engagement, it might still be capable of enforcement.

But in regard to the second class of laws specified above, more doubt exists. It is well settled as a general rule that personal property has no *situs*, and follows the person of the owner; but this is subject to the qualification that a transfer of movables shall not have any effect given to it in the courts of the country where they are situated, if it contravenes some express provision of the law. To this qualification the decisions in the cases of *Thurman* v. *Stockwell* (see Judge PECKHAM'S opinion), *Caskie* v. *Webster*, 1 Wall. Jr. 131, and *Speed* v. *May*, 17 Penna. St. 91, are said to be exceptions, for in those cases the law is stated to be, that the legal *situs* of movables follows the domicil of the owner, and that the law of the actual *situs* protects the claims of creditors domiciled there only against transfers by operation of the law. In the principal case, indeed, these decisions are attempted to be based upon the distinction between mere choses in action and corporeal movables; but that was not the ground upon which *Caskie* v. *Webster* and *Speed* v. *May* were decided; and if we are to look to the reasons of decisions as an index to future judicial action, rather than to the bald point actually adjudicated, we must be led to the conclusion that the courts in Pennsylvania will give effect to the transfer of movables valid in the place of contract, although invalid according to the *lex loci rei sitæ*. But it must be remembered that even in that state, when a *situs*

of movable property different from the domicil of the owner is expressly recognised by act of the legislature, the law of the *situs* must govern. This is illustrated by the case of *Philson* v. *Barnes*, 50 Pennsylvania St. 230, where the attagnment by a non-resident of a debt due by a resident of Pennsylvania, was held void as against a subsequent attachment because not recorded in compliance with the provisions of the Act of May 3d 1855. That act provides that no *bonâ fide* purchaser, mortgagee or creditor having a lien on the said property, before the recording in the county where it is situated, and not having received actual notice of the transfer, shall be affected or prejudiced thereby; and it was accordingly held that the express enactment of the statute prevented the application of the rule in *Speed* v. *May*. It will be observed that in this case also the subject of the assignment was a chose in action, but that no stress seems to have been laid upon that circumstance. The Pennsylvania doctrine is however exceptional, and the rule in all the other states of the Union is the other way: See 2 Kent's Com. pp. 407–408. And it may perhaps be stated somewhat in these terms, that an assignment of corporeal movables valid in the place where it is made, will not have effect given to it in another country, where it contravenes an express policy of the law against the residents of the latter place, unless the assignment has been perfected by change of possession. It will be observed that this statement of the rule suggests several qualifications.

1. When the party who claims to hold the property is himself a resident of the state where the assignment is made, he cannot claim it adversely to the assignment, although the transfer is invalid according to the *lex loci rei sitæ*. See *Warren* v. *Van Buskirk*, 13 Abbot's Practice Reports, affirmed in Court of Appeals in 1865; *Bullock* v. *Taylor*, 16 Pick. 335. The reason of this is that the courts of a country will only violate that principle of comity, which requires that sales valid where made shall be held valid everywhere, in favor of their own citizens, and in order to protect their rights, and that no such violation could be justified in favor of one who is seeking to go contrary to the laws of his own domicil. If, therefore, there has been an assignment in one state valid there, but invalid in another state, the tribunals of the latter will not listen to a citizen of the former who attempts to impeach it. And as a necessary consequence the courts of the former state will interfere by injunction, to restrain its citizens from prosecuting an execution in another state where the property which is the subject of the assignment is situated, and where the assignment is invalid. See *Dehon* v. *Foster*, 4 Allen 543.

2. Where there has been an actual transfer of possession, the transfer will be upheld everywhere. This is illustrated by the comparatively recent cases of *Handford* v. *Paine*, 32 Vermont 442; *Rice* v. *Courtis*, Ibid. 460, and *Mead v. Dayton*, 28 Conn. 33. In the first of these cases there was an assignment for the benefit of creditors made in New York by a resident of that state, which included (*inter alia*) personalty situated in Vermont. This assignment was valid according to the law of New York, but was not in accordance with the statute of Vermont relating to such assignments, inasmuch as no copy of it was filed in any county clerk's office in the latter state. The assignees came to Vermont and took possession of the property; and it was held that an attachment by trustee process, subsequently issued by the Vermont creditors of the assignor, came too late. On the other hand in *Rice* v. *Courtis*, it was held, that, where a transfer of chattels situated in Vermont, was not followed by the change of possession, which was required by the policy of the

law of that state, although no such change was requisite under the *lex loci contractus*, the assignment would not stand against a subsequent attachment. *Mead* v. *Dayton*, *supra*, is also an interesting case. There, a debtor residing in Connecticut, made a transfer of property situated in that state to a New York creditor, in satisfaction of the debt, and the transfer was consummated by an actual delivery of possession to the creditor in New York. Two days after this the debtor made an assignment for the benefit of his creditors, under the insolvent laws of Connecticut, one of the provisions of which was, that all transfers made 60 days before insolvency, and in contemplation thereof, shall be void. The creditor subsequently happened to come into Connecticut, and was sued in trover by the assignee in insolvency, and it was held that the latter could not recover. This decision was undoubtedly correct, but one of the propositions laid down by ELLSWORTH, J., must perhaps be taken with some degree of qualification, viz., that a title legally acquired under the law of the *situs* of the property, is, as a general rule of law, good elsewhere, and will be maintained; for, as will be attempted to be shown, when the transfer is invalid, both under the *lex loci contractus* and the *lex fori*, to hold it valid, simply because it is so regarded by the law of the place where the chattels chance to be situated, would be paying too much regard to the latter law. See also *Koster* v. *Merritt*, 32 Conn. 246.

3. When the property is situated in the place where the assignment is made, and is subsequently removed to another state, where the assignment would have been invalid, it will not by such removal become liable to execution. Thus in *Cobb* v. *Buswell*, 37 Vermont 337, a debtor residing in New Hampshire executed to his creditor a chattel mortgage of goods situated in the same state, which, under the New Hampshire law, was valid without change of possession. The debtor, with the consent of the creditor, subsequently brought the chattels into Vermont, where they remained in his exclusive possession for six months, at the expiration of which time they were attached at the suit of Vermont creditors. By the law of this latter state, a chattel mortgage without change of possession is invalid; but it was nevertheless held, in an action brought by the mortgagee against the attaching officer, that the *lex loci contractus* must govern, that the plaintiff's lien was not divested by the change in the *situs* of the goods, and that he was therefore, entitled to recover.

4. Choses in action are intimated by Judge PECKHAM in the principal case to be an exception to the general American rule, and the cases of *Speed* v. *May*, 17 Pa. State 91, and *Caskie* v. *Webster*, 1 Wall. Jr., 131, are put upon that ground. But a debt seems to have a *situs* to this extent, viz., that its transfer cannot be enforced in the domicil of the debtor if it interferes with some positive law of that country. See *Philson* v. *Barnes*, 50 Pa. State 230.

5. Where the *lex loci contractus* and the *lex fori* are the same, the question how far the law of the *situs* of the property shall be recognised, becomes one of some nicety. In the principal case it will be observed that the assignment was valid according to the law of the place where it was made, and, also according to that of the place where advantage was sought to be taken of it; and the only ground on which the court declined to enforce the contract was because the subject thereof was situated in another state, where the contract was invalid. By the assignment of Boardman & Company to the plaintiff, the title to the property in dispute passed as far at least as the law of New York was concerned; but that title was held liable to be divested,

because of the failure of the act of transfer to come up to certain requirements of a statute of New Jersey. The Court of Appeals decided in effect that they would observe that rule of comity in favor of New Jersey, which the New Jersey law declined to observe in favor of New York. For if the comity among nations requires that an assignment of movables valid where made, shall be of binding force everywhere, then where the courts of another country refuse to give it effect because of its violation of some settled policy or positive law, that rule of comity is broken. And when matters go one step farther, and the validity of the transfer comes to be tested, not in the jurisdiction where the property is situated, but in that of the place where the contract is made, it might perhaps be a matter of grave doubt whether the courts of the latter should exhibit any great tenderness towards the law of another state, which declines, on its part, to make any such manifestation of regard. Reasoning by analogy is undoubtedly dangerous; but we may venture, for the purpose of casting some light upon this question, to allude to an illustration of the refusal of Courts to carry the rule of comity to such an extent, which is to be found in the case of Wilson's Trusts, decided by Vice-Chancellor KINDERSLEY in December 1865, and reported in 1 Law Rep. Eq. 246. In that case there was a gift by will of real and personal estate situated in England, by a testator there resident, to his grandniece for her life, with remainder as to the personalty to her children, and as to the realty to her first and other sons lawfully begotten. The grandniece married in England; but subsequently obtained a divorce *a vinculo* from a Scottish court—the husband having been induced to go to that country and reside there a sufficient time in order to give the courts jurisdiction. The lady then married again in Scotland, and had issue born during the first husband's lifetime. As the divorce was by the English law invalid, it of course became a question, after the death of the tenant for life, whether the children born during the lifetime of the first husband were legitimate, and therefore entitled to take.

"The argument in support of the Shaws (the children) contention," said the Vice-Chancellor, "that the marriage with Shaw was a valid marriage, is based upon this proposition, that it is an established principle of international law, and therefore a part of the law of every Christian civilized country, that whensoever questions arise, as the validity or the incidents or the consequences of a marriage, those questions must be determined by the courts of the country in which they arise, according to the law of the country where the marriage was solemnized, *i. e.*, according to the *lex loci contractus*, and not according to the *lex fori;* and applying that general proposition to the case now before the court, it is contended that as the marriage with Shaw took place in Scotland, this court must decide all questions relating to the validity or incidents or consequences of that marriage by the law of Scotland; and, that according to the law of Scotland (as it was asserted) the marriage with Shaw was a valid marriage because according to the law of Scotland, the prior marriage with Buxton had been absolutely dissolved by the decree of the Court of Session. Such is in substance the reasoning by which the validity of the marriage with Shaw and the consequent legitimacy of the children are maintained. Now it is curious to observe how the whole argument is founded upon the tacit assumption, that it is competent to the Court of Session in Scotland to ignore or to violate the very principle of international law upon which the argument rests, and which it is asserted is binding upon the English courts. I say that to assert the validity

of the Scotch divorce, upon which alone the validity of the marriage with Shaw depends, is to assert that the Court of Session in Scotland is not bound by that principle of international law before mentioned, viz., that all questions as to the validity or incidents or consequences of a marriage are to be decided according to the *lex loci contractus*, *i. e.*, the law of the country where it was solemnized. The marriage with Buxton was solemnized in England, where both were domiciled. By the English law of marriage an English marriage is absolutely indissoluble by the sentence of any court (of course I am speaking of the law as it stood at the time of the transactions in question, which was long before the passing of the act establishing the Divorce Court). The law of this country did not recognise the right or authority of any court, whether domestic or foreign, to dissolve an English marriage for any cause or upon any pretext whatever, and any decree or judgment, or sentence of any foreign court purporting to dissolve such marriage, is treated as a mere nullity. This was solemnly decided in Lolley's Case. In decreeing a dissolution of the marriage with Buxton, the Court of Session took upon itself to disregard the quality of indissolubility which the law of England attaches to an English marriage, and dealt with the marriage with Buxton, not according to the law of England, where it was solemnized, but according to the law of Scotland, *i. e.*, not according to the *lex loci contractus*, but according to the *lex fori*. In so doing, the Scottish court violated that very principle of international law which is now invoked by the Shaws as a reason for maintaining the validity of the marriage with Shaw. The sentence of divorce, pronounced by the Court of Session, must be treated by this court and by every English court as a mere nullity, and as wholly inoperative to dissolve the marriage with Buxton; and as that marriage remained undissolved, of course the marriage with Shaw was not a valid marriage."

We have made this long extract from the Vice-Chancellor's opinion, because the law seems to be there stated with great clearness and force; and if we take the rule to be as there laid down, we arrive at the conclusion that, if the law of one country declines to recognise the character and extent of the binding force of a contract made in another, the courts of the latter country are not bound by any principle of comity in favor of the former, when any question arising out of the transaction comes up for adjudication. Applying this, then, to the facts of the principal case, it does seem rather strange that the law of New York should recognise in favor of New Jersey, a violation of the rule of comity, which requires that a transfer of movables, valid where made, should be held valid everywhere; while the law of New Jersey refuses to give effect to that rule. For, as has been already stated, the general rule undoubtedly is, that a sale of movables valid where made shall be held to be valid everywhere, and what has been called an exception to the rule, viz., that such an effect will not be given to the contract when it contravenes some express provision of the law of the *situs*, is only in truth a violation of it. And the question then is, whether that violation shall obtain only in the courts of the place of the *situs*, or whether the tribunals of the place of contract also shall give effect to that violation, and refuse to lend the assistance of the courts to the enforcement of a valid contract against persons within their jurisdiction, simply because the subject thereof is personal property within another forum. If the ground of this decision is correct, then a sale in New York valid by the laws of that state will not be there enforced, because the chattels which are

the subject of it are situated in New Jersey; and personal property will be considered to have a *situs* as much as real property, and its transfer would in all cases be regulated by the law of the *situs*. It will be observed that Judge PECKHAM in the beginning of his opinion says, "the point is here distinctly presented, and it is the only point in the case, whether a sale in New York, legal there, of chattels situated in New Jersey, is valid in the latter state as against creditors of the assignors residing there, when it is void by the laws thereof." It is submitted that this statement of the point before the court is not strictly accurate. For the question is not whether the assignment shall be held valid by the laws of New Jersey, but whether it shall be held invalid by the courts of New York, because it is so held by the *lex loci rei sitæ*, or in other words, whethe *lex loci rei sitæ* is of such force that it will bear down both the *lex loci contractus* and the *lex fori* together.

These criticisms upon the ground of this decision in the principal case are submitted with no small diffidence, and with the decision itself we are not disposed to quarrel. The boilers appear never to have left the possession of Boardman & Co, and in that case they had an undoubted right to retain them even against a valid assignee, until the price was paid; but the decision would appear more satisfactory, if the grounds upon which it is rested had been different. We cannot conclude these few remarks, without expressing our regret that the law upon this subject has been overlaid with so many distinctions and refinements; and that the simple rule of holding a voluntary assignment of movables, valid where made, to be valid everywhere, has not been strictly adhered to. G. T. B.

Supreme Court of Maine.

CYNTHIA S. LEATHERS, ADM'X., *v.* JAMES GREENACRE.

At common law, a will of personal property, written in the testator's own hand, without seal, though no witnesses were present at its publication, is good; and no particular form of expression is material, if only the testator's intention is manifest.

By R. S., c. 74, § 18, "a soldier in actual service, or a mariner at sea, may dispose of his personal estate and wages," as he might have done under the common law.

The terms "in actual service," and "engaged in an expedition," are synonymous.

The term "expedition" is not to be confined to that movement of the troops which immediately precedes the actual conflict and shock of battle.

If, during the late rebellion,—and after he had been mustered into the military service of the United States, but while he remained in barracks, or while thus quartered at any military station in one of the loyal states not exposed to the incursions of the enemy, and before he had crossed over to the seat of war with his regiment to take part in the hostilities existing there, and before he had begun to move under military orders against the foe,—a soldier had made a will without observing the usual statute formalities, it would not be deemed the will of a "soldier in actual service," and therefore not entitled to probate as such.